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Attorneys for Plaintiff  
CRAIG YATES

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES,  
Plaintiffs,

v.

CITY AND COUNTY OF SAN  
FRANCISCO; CITY OF SAN FRANCISCO  
UPTOWN PARKING CORPORATION; and  
DOES 1-50, Inclusive,  
Defendants.

CASE NO. C07-04087 JSW  
Civil Rights

**DECLARATION OF TIMOTHY S.  
THIMESCH IN OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS  
AND MOTION TO STRIKE**

**Hearing:**

Date: February 8, 2008  
Time: 9:00 AM  
Place: Courtroom 2, 17<sup>th</sup> Fl  
Judge: Hon. Jeffrey S. White

I, Timothy S. Thimesch, declare:

When defendants re-filed their Amended Motion to Dismiss/Strike on December 12, 2007 (i.e., without any leave of court and after having waited a full four months after original service of the Complaint), I contacted defendants seeking any explanation or good cause for the delay. My meet and confer efforts were met only one line replies stating in conclusory fashion that defendants' motion was "timely." Attached at **Exhibit 1** is a true and correct copy of the email chain with defense counsel in this regard.

I certify that the foregoing is true and correct under penalty of perjury pursuant to the

1 laws of the United States of America.

2 Executed this 18<sup>th</sup> day of January, 2008 in Walnut Creek, California.

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4 /s/  
5 Timothy S. Thimesch, declarant  
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**Certificate or Proof of Service by Mail, Fax or Personal Delivery**

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Contra Costa, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is Thimesch Law Offices, 158 Hilltop Crescent, Walnut Creek, California; that on the below date, following normal business practice, I caused to be served the foregoing document(s) described as:

**DECLARATION OF TIMOTHY S. THIMESCH IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE**

(Yates v. Union Square, et al., Northern District Case No. C07-04087 JSW)

on the interested parties in this action, by taking a true copy thereof and conveying as follows:

**AS INDICATED:**

☐ **See Attached Service List.**

☐ **Personal Delivery:** By personally delivering, or causing to be hand delivered through a fax-filing or messenger agency, true and exact copies of these documents to the above entitled place of business (or as indicated on the attached service list) with directions to deliver them immediately to See Above attorneys for the Defendants.

☒ **Courtesy Email:** By email transmission with attachments enclosed in PDF and with a request for delivery and read receipts.

(☐ Without exhibits, which are to follow by mail; ☐ With exhibits; ☒ N/A):

☐ **Facsimile:** By facsimile transmission, from our regular facsimile machine at (888) 210-8868, at approximately \_\_\_\_\_, or soon thereafter, addressed to the following facsimile machine (☐ Without exhibits, which are to follow by mail; ☐ With exhibits; ☒ N/A):

Name of Person Served: See Above

Facsimile Telephone No: See Above

A facsimile machine report was printed immediately thereafter, which verified that the transmission was complete and without error.

☒ **U.S. Mail and/or Overnight:** By depositing true copies thereof, enclosed in a sealed envelope(s) with postage thereon fully prepaid, marked with the above address(es), and placed in:

☒ in First Class United States Mail

☐ in ☐ priority, or ☐ standard, overnight mail via Federal Express,

I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at Walnut Creek, and designated overnight packages will be timely scheduled for pickup or placed in Federal Express drop boxes or left at drop centers.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made, and that the foregoing is true and correct under penalty of perjury pursuant to the laws of the United States and the state of California. Executed this **January 18, 2008**, in Walnut Creek, California.

By:



TIMOTHY S. THIMESCH  
(Original signed)

**SERVICE LIST**

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**EXHIBIT 1**

**Timothy S. Thimesch**

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**From:** Timothy S. Thimesch [tim@thimeschlaw.com]  
**Sent:** Wednesday, December 12, 2007 6:40 PM  
**To:** 'Orlick, Martin H.'  
**Cc:** 'Jim Emery'; 'Gene A. Farber Esq.'  
**Subject:** RE: Yates v. Union Square (Objection to Defendants' Motion to Dismiss)

Mr. Orlick,

Again, and in a last effort to meet and confer, what do defendants intend to say in opposition? What possible reason could defendants have for waiting 60 days? As you know, a defendant in your situation that fails to meet and confer is ordinarily afforded no opportunity to oppose.

Sincerely,

Tim Thimesch

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**From:** Orlick, Martin H. [mailto:MHO@JMBM.com]  
**Sent:** Wednesday, December 12, 2007 4:37 PM  
**To:** Timothy S. Thimesch  
**Cc:** Jim Emery; Gene A. Farber Esq.  
**Subject:** RE: Yates v. Union Square (Objection to Defendants' Motion to Dismiss)

Tim, it confirms nothing! If you object to our Motion, I will file an appropriate reply.

-----Original Message-----

**From:** Timothy S. Thimesch [mailto:tim@thimeschlaw.com]  
**Sent:** Wednesday, December 12, 2007 3:14 PM  
**To:** Orlick, Martin H.  
**Cc:** 'Jim Emery'; 'Gene A. Farber Esq.'



**Subject:** RE: Yates v. Union Square (Objection to Defendants' Motion to Dismiss)

Dear Mr. Orlick:

Great, then that should confirm you will not be supplying the Court with any reasons either.

Sincerely,

Tim Thimesch

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From: Orlick, Martin H. [mailto:MHO@JMBM.com]  
Sent: Wednesday, December 12, 2007 3:09 PM  
To: Timothy S. Thimesch  
Cc: Jim Emery; Gene A. Farber Esq.  
Subject: RE: Yates v. Union Square (Objection to Defendants' Motion to Dismiss)

Nothing further need be said.

-----Original Message-----

**From:** Timothy S. Thimesch [mailto:tim@thimeschlaw.com]  
**Sent:** Wednesday, December 12, 2007 3:04 PM  
**To:** Orlick, Martin H.  
**Cc:** 'Jim Emery'; 'Gene A. Farber Esq.'  
**Subject:** RE: Yates v. Union Square (Objection to Defendants' Motion to Dismiss)

Dear Mr. Orlick,

Given the below course of events, your response is hardly sufficient. Perhaps you can supply us with the reasons defendants believe it was timely filed, i.e., the same reasons that you anticipate providing to the Court. Why did defendants wait over 60 days?

Sincerely,

Tim Thimesch

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**From:** Orlick, Martin H. [mailto:MHO@JMBM.com]  
**Sent:** Wednesday, December 12, 2007 2:20 PM  
**To:** Timothy S. Thimesch; Jim Emery  
**Cc:** Gene A. Farber Esq.  
**Subject:** RE: Yates v. Union Square (Objection to Defendants' Motion to Dismiss)

The re-noticed motion is timely filed.

-----Original Message-----

**From:** Timothy S. Thimesch [mailto:tim@thimeschlaw.com]  
**Sent:** Wednesday, December 12, 2007 1:34 PM  
**To:** Orlick, Martin H.; 'Jim Emery'  
**Cc:** 'Gene A. Farber Esq.'  
**Subject:** Yates v. Union Square (Objection to Defendants' Motion to Dismiss)

Dear Counsel,

Plaintiff intends to object to, and seek sanctions against, defendants' Motion to Dismiss, which is extremely and unconscionably late. Defendants were served with the Summons and Complaint over 3 ½ months ago. And it has been over 60 days since Judge White gave defendants the option of re-filing their motion. (Defendants will recall that the motion was taken off calendar only after defendants declined to accept Magistrate Laporte's jurisdiction at the last second.) Defendants did not promptly refile their motion. Instead defendants chose to file 2 motions to relate this case to others, which were denied.

Therefore, having waited so long without any sufficient cause or an application for extension of time, plaintiff contended defendants have long ago waived their right to file this delaying motion, and had asked that defendants simply file their Answer. This late attempt to file re-file the motion only after



unsuccessful forum shopping efforts will now prejudice the progress of this case, which is scheduled for case management in early January. Please withdraw defendants' motion and promptly file an Answer.

Sincerely,

Tim Thimesch